Comptroller's Handbook

Consumer Compliance

Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices

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Office of the
Comptroller of the Currency

Contents

Introduction

The Office of the Comptroller of the Currency's (OCC) *Comptroller's Handbook* booklet, "Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices," is prepared for use by OCC examiners in connection with their examination and supervision of national banks, federal savings associations, and federal branches and agencies of foreign banking organizations (collectively, banks). Each bank is different and may present specific issues. Accordingly, examiners should apply the information in this booklet consistent with each bank's individual circumstances. When it is necessary to distinguish between them, national banks and federal savings associations (FSA) are referred to separately.

This booklet provides information regarding section 5 of the Federal Trade Commission (FTC) Act.[1] Section 5 of the FTC Act prohibits unfair or deceptive acts or practices (UDAP) in or affecting commerce. The FTC's standards for assessing whether a particular practice is unfair or deceptive are set forth in two policy statements—the "FTC Policy Statement on Unfairness" (December 17, 1980) and the "FTC Policy Statement on Deception" (October 14, 1983). The OCC's standards for assessing whether a practice is unfair or deceptive are derived from the principles in the FTC's policy statements and communicated in OCC Advisory Letter 2002-3, "Guidance on Unfair or Deceptive Acts or Practices." This booklet also provides information regarding sections 1031 and 1036 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, which prohibits unfair, deceptive, or abusive acts or practices (UDAAP). Refer to appendix C of this booklet for a summary of legal standards for UDAP and UDAAP.

The content in this booklet informs examiners about the risks of banks and their third parties engaging in lending, marketing, or other practices that may constitute UDAP or UDAAP. Examiners may use this booklet as well as the "Compliance Management Systems" booklet of the *Comptroller's Handbook* when evaluating the effectiveness of the bank's processes to identify, measure, monitor, and control UDAP and UDAAP risks. Examiners may also use information in this booklet to identify specific bank processes or practices that affect a bank's UDAP or UDAAP risk. For example, the "Marketing and Disclosures" and "Loan Servicing, Account Management, and Collections" sections of this booklet include processes that are typically incorporated into a bank's compliance management system (CMS) to control UDAP and UDAAP risks and to reduce the likelihood of UDAP or UDAAP issues occurring. Additionally, appendix A, "UDAP and UDAAP Red Flags," in this booklet identifies warning signs of potential UDAP or UDAAP risks.

This booklet provides expanded procedures to assist examiners in evaluating UDAP and UDAAP risks and in assessing associated risk management (including evaluating a bank's CMS). This booklet is structured consistent with interagency consumer compliance rating system elements[2] and provides information on other risks related to UDAP and UDAAP.

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[1] Refer to 15 USC 45(a)(1).

[2] Refer to the "Compliance Management Systems" booklet of the *Comptroller's Handbook* for more information regarding the Interagency Consumer Compliance Rating System.

Related "Compliance Management Systems" Booklet Section

Throughout this booklet, related sections of the "Compliance Management Systems" booklet of the *Comptroller's Handbook* are referenced using boxes like this one.

OCC's Supervisory Approach

The OCC has supervisory and enforcement authority for the UDAP provisions in section 5 of the FTC Act for all OCC-supervised banks. The OCC has supervisory and exclusive enforcement authority for the UDAAP provisions in sections 1031 and 1036 of Dodd–Frank for banks with total assets of $10 billion or less. Under Dodd–Frank, the Consumer Financial Protection Bureau (CFPB) has exclusive supervisory authority and primary enforcement authority over insured depository institutions with total assets over $10 billion for "Federal consumer financial laws," including the UDAAP provisions of sections 1031 and 1036 of Dodd–Frank. The CFPB does not have supervisory or enforcement authority over the UDAP provisions of section 5 of the FTC Act.[3]

When evaluating a bank's CMS and assigning the consumer compliance component rating,[4] regardless of a bank's asset size, examiners should consider the effectiveness of the bank's risk management system to

- identify, measure, monitor, and control UDAP and UDAAP risks.
- prevent acts or practices that could constitute UDAP or UDAAP.
- identify and address acts or practices that could constitute UDAP or UDAAP.

Since the bank's CMS is part of its overall risk management system, examiners may also consider the effectiveness of the bank's UDAP and UDAAP risk management when assigning other component ratings, such as the management component rating.[5] Additionally, examiners reviewing a bank's corporate and risk governance and drawing conclusions on the bank's risk management system should consider the conclusions from all examination areas, including examiner evaluations of the bank's CMS and assignment of the consumer compliance component rating.

The OCC applies UDAP and, as applicable, UDAAP standards on a case-by-case basis. Whether conduct constitutes UDAP or UDAAP depends on the facts and circumstances.

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[3] The CFPB has exclusive supervisory authority and primary enforcement authority over insured depository institutions with total assets over $10 billion for "Federal consumer financial laws." Refer to 12 USC 5515 (section 1025 of Dodd–Frank). "Federal consumer financial laws" include the UDAAP prohibition of Dodd–Frank but do not include the UDAP provision in the FTC Act.

[4] Refer to the "Compliance Management Systems" booklet of the *Comptroller's Handbook* for more information about evaluating a bank's CMS and assigning the consumer compliance component rating. This includes consideration of laws and regulations for which the CFPB is assigned exclusive supervisory authority under Dodd–Frank.

[5] Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for more information about assigning the management component rating.

Examiners may refer to appendix C, "Legal Standards," in this booklet to assist in assessing whether a specific act or practice may constitute a potential UDAP or UDAAP. Examiners should seek guidance from, as appropriate, the supervisory office, lead experts, Bank Supervision Policy, and OCC legal counsel when considering these facts, circumstances, and legal standards.

Examiners should consider UDAP and UDAAP risks when scoping and conducting supervisory activities, such as examinations (e.g., fair lending examinations or examinations involving the bank's retail lending, non-deposit investment products, other real estate owned, credit card, deposit related credit, installment lending, model risk management, bank information technology, or third-party risk), customer complaint reviews, or whistleblower investigations. Additionally, supervisory strategies may need to be adjusted to address heightened UDAP or UDAAP risks identified during ongoing supervision or other supervisory activities (e.g., learning the bank intends to offer a new product or service that poses UDAP or UDAAP risk).

Risks Associated With UDAP and UDAAP

From a supervisory perspective, risk is the potential that events will have an adverse effect on a bank's current or projected financial condition[6] and resilience.[7] The OCC has defined eight categories of risk for bank supervision purposes: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation. These categories are not mutually exclusive. Any product or service may expose a bank to multiple risks. Risks also may be interdependent and may be positively or negatively correlated. Examiners should be aware of and assess this interdependence. Examiners also should be alert to concentrations that can significantly elevate risk. Concentrations can accumulate within and across products, business lines, geographic areas, countries, and legal entities. Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for an expanded discussion of banking risks and their definitions.

The risks associated with UDAP and UDAAP are compliance, credit, operational, strategic, and reputation. The consequences of engaging in UDAP or UDAAP can include litigation, enforcement actions (including civil money penalties [CMP]),[8] and monetary restitution. For example, the OCC has taken public enforcement actions associated with marketing and administration of add-on products and services, such as identity theft protection (e.g., credit monitoring) and debt cancellation contracts.[9] In addition, the OCC has identified potential

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[6] Financial condition includes impacts from diminished capital and liquidity. Capital in this context includes potential impacts from losses, reduced earnings, and market value of equity.

[7] Resilience recognizes the bank's ability to withstand periods of stress.

[8] Refer to the "Supervisory Actions" section of the "Bank Supervision Process" booklet of the *Comptroller's Handbook.* Refer also to OCC Bulletin 2018-41, "OCC Enforcement Actions: OCC Enforcement Action Policies and Procedures Manuals."

[9] There are additional OCC regulations that govern debt cancellation contracts entered into by national banks. Refer to 12 CFR 37, "Debt Cancellation Contracts and Debt Suspension Agreements."

UDAP issues in other areas, including overdraft programs and the force placement of auto insurance where the bank and its vendor caused the improper placement or maintenance of collateral protection insurance policies where the borrowers had adequate insurance.

Compliance Risk

Compliance risk is the risk to a bank's current or projected financial condition and resilience arising from violations of laws or regulations, or from nonconformance with prescribed practices, internal bank policies and procedures, or ethical standards. This risk exposes a bank to potential fines, civil money penalties, payment of damages, and the voiding of contracts. Compliance risk can result in diminished reputation, harm to bank customers, limited business opportunities, and lessened expansion potential.

A bank may be at increased risk of engaging in UDAP and UDAAP when it introduces new, modified, or expanded bank products and services (collectively, new activities),[10] particularly those that are targeted at financially unsophisticated individuals, or those vulnerable to financial abuse, such as the elderly, young people, limited English proficient (LEP) individuals,[11] or financially distressed individuals. Risk can also increase when the bank implements new delivery channels and when the bank experiences significant staff turnover, particularly when new staff are not adequately qualified or trained.

Compliance risk can increase when a bank offers products or services through third parties (e.g., direct or target marketing companies, mortgage loan brokers, and mortgage loan originators), particularly if the bank does not appropriately manage these third-party relationships.[12]

A bank's advertising, promotional materials, and disclosures (including those provided by a third party or produced by an automated system) must comply with applicable laws and regulations.[13] Materials that are not presented in a clear, balanced, and timely manner can increase the risk of UDAP or UDAAP issues.

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[10] Refer to OCC Bulletin 2017-43, "New, Modified, or Expanded Bank Products and Services: Risk Management Principles."

[11] LEP individuals do not speak English as their primary language and have a limited ability to read, speak, write, or understand English. These individuals may be entitled under state or federal law or regulation to language assistance with respect to a particular type of service, benefit, or encounter.

[12] Refer to OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance"; OCC Bulletin 2017-7, "Third-Party Relationships: Supplemental Examination Procedures"; and OCC Bulletin 2020-10, "Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29."

[13] Refer, for example, to 12 CFR 1002.4, 1026.16, 1026.24, and 1030.8, for advertising requirements.

Credit Risk

Credit risk is the risk to current or projected financial condition and resilience arising from an obligor's failure to meet the terms of any contract with the bank or otherwise perform as agreed.

Potential UDAP or UDAAP issues can increase the bank's credit risk. For example, unearned fees charged to a credit card account can increase a consumer's repayment obligation and increase both the likelihood of default as well as the credit losses taken by the bank at default. Additionally, credit risk increases when obligors are released from repayment when a bank's UDAP or UDAAP issues require the bank to void contracts.

Operational Risk

Operational risk is the risk to current or projected financial condition and resilience arising from inadequate or failed internal processes or systems, human errors or misconduct, or adverse external events.

An effective risk management system, inclusive of proper internal controls, helps to control operational risk exposures. Leveraging controls through automation can further reduce operational risk by limiting opportunities for human error or fraud and affording better tracking and monitoring of performance or risk management activities. An inadequate system of controls, including controls over highly automated systems or environments, can compound errors and increase operational risk. External events (e.g., changes in regulatory environment or changes in market conditions) can increase the bank's operational risk exposure.

The likelihood of UDAP or UDAAP occurring can increase when a bank has heightened operational risk or operational risk management weaknesses. Examples of operational lapses include failing to

- develop a proper control environment inclusive of policies and procedures aimed at preventing fraud or other abuses.
- properly oversee the activities of third parties.
- provide training and support for employees.
- have a proper information technology (IT) system or application to support the initiatives.

In some cases, the operational lapses are due to improper compensation incentives that reward excessive risk taking or place the profit interests of the bank ahead of the customers' needs or suitability of products and services.

In delivering products and services, many banks rely on the use of third parties. Third parties can provide advantages such as ease of entry, expertise, and technological support. However, the bank remains responsible for the actions or omissions of a third party conducting activities on the bank's behalf.

Strategic Risk

Strategic risk is the risk to current or projected financial condition and resilience arising from adverse business decisions, poor implementation of business decisions, or lack of responsiveness to changes in the banking industry and operating environment. This risk is a function of a bank's strategic goals, business strategies, resources, and quality of implementation.

Strategic risk can occur when management does not adequately analyze risk impact of external and internal factors, such as scaling of staffing and controls, technological needs, competitive pressures, and regulatory requirements, associated with business decisions before engaging in new activities that carry higher UDAP or UDAAP risk. Strategic risk can increase when the bank does not allocate appropriate resources or controls in response to business decisions, including decisions to offer new activities that may be susceptible to UDAP or UDAAP risk.

Reputation Risk

Reputation risk is the risk to current or projected financial condition or resilience arising from negative public opinion. This risk may impair a bank's competitiveness by affecting its ability to establish new relationships or services or continue servicing existing relationships.

Engaging in practices that harm customers can undermine the bank's reputation and its ability to retain customers. Inappropriate delegation of activities to third parties without appropriate bank oversight, or wrongful acts by third parties acting on the bank's behalf, can increase a bank's reputation risk, particularly when customers are harmed. Effective controls are critical to managing reputation risk (e.g., handling and monitoring of customer complaints, promptly and effectively correcting deficiencies, and providing remediation to harmed customers when appropriate).

Risk Management

Each bank should identify, measure, monitor, and control risk, including UDAP and UDAAP risks, by implementing an effective risk management system appropriate for its size, complexity, and risk profile. When assessing the bank's size, complexity, and risk profile, examiners should consider the volume of products or services offered or serviced by the bank, including products or services offered through a third party. Examiners should be mindful that size is only one criterion for assessing UDAP and UDAAP risks. For example, a small bank could have a large mortgage or credit card operation that poses heightened UDAP and UDAAP risks, whereas a bank of a large asset size could offer products and services that pose low UDAP and UDAAP risks. In this example, the smaller bank's risk management would generally be more robust than a noncomplex, lower-risk bank of similar size. Likewise, the large bank's risk management could be less robust than a similarly sized bank with activities presenting higher UDAP and UDAAP risk.

When examiners assess the effectiveness of a bank's risk management system, they consider the bank's policies, processes, personnel, and control systems. Refer to the "Corporate and Risk Governance" booklet of the *Comptroller's Handbook* for an expanded discussion of risk management.

As part of the bank's overall risk management system, a CMS is the method by which a bank manages compliance risk (including risk of noncompliance with UDAP and UDAAP provisions), complies with laws and regulations, and prevents consumer harm. The primary components examiners consider when evaluating a bank's CMS regarding consumer protection-related laws and regulations include board and management oversight and the bank's consumer compliance program. An adequate CMS generally incorporates UDAP and UDAAP risk management.[14] The formality and range of practices that a bank employs vary depending on the bank's size, complexity, and risk profile. For example, a bank that offers a limited number of products through a few branches typically does not need a CMS as comprehensive as a bank engaged in nationwide mortgage or credit card lending. Other booklets of the *Comptroller's Handbook* include product-specific information regarding UDAP and UDAAP risks.[15]

Examiners should draw conclusions on the quantity of a bank's UDAP and UDAAP risks and the quality of risk management. When evaluating the quantity of a bank's UDAP and UDAAP risk, examiners should consider risk factors that could affect the level or volume of UDAP and UDAAP risk. When evaluating the quality of risk management, examiners should determine how well the bank identifies, measures, monitors, and controls UDAP and UDAAP risk. Refer to appendix B, "UDAP and UDAAP Risk Indicators," of this booklet for risk indicators to consider when determining the quantity of a bank's UDAP and UDAAP risk and the quality of a bank's UDAP and UDAAP risk management.

Board and Management Oversight

Board and management oversight, including oversight over UDAP and UDAAP risk management expectations for third-party relationships, should be commensurate with the bank's size, complexity, and risk profile. The potential consequences of UDAP or UDAAP violations can affect the bank, management, and directors. Potential consequences include customer reimbursements, significant operational expenditures to remediate UDAP or UDAAP issues, financial losses, reputational damage, legal actions, and enforcement actions (including CMPs).

Regardless of a bank's size or complexity, a bank's board and management should provide adequate oversight for the bank's UDAP and UDAAP risk management and compliance processes. Sound risk management and compliance processes include involvement from key

[14] Refer to the "Compliance Management Systems" booklet of the *Comptroller's Handbook* for more information regarding compliance management systems.

[15] Refer, for example, to the "Credit Card Lending," "Deposit-Related Credit," "Installment Lending," "Mortgage Banking," "Retail Lending," "Residential Real Estate," and "Student Lending" booklets of the *Comptroller's Handbook.*

stakeholders (e.g., legal, compliance, audit, marketing, third-party risk management, lines of business, and operations). Refer to the “Compliance Management Systems” and the “Corporate and Risk Governance” booklets of the *Comptroller’s Handbook* for more information regarding the roles of the board and management for overseeing the bank’s risk management and compliance processes, including those related to UDAP and UDAAP.

Risk Assessment

> **Related “Compliance Management Systems” Booklet Section**
>
> - “CMS Components” > “Board and Management Oversight” > “Comprehension, Identification, and Management of Risk” > “Risk Assessment”

Examiners should assess the effectiveness of the bank’s risk assessment process. A sound risk assessment process identifies and evaluates UDAP and UDAAP risks and determines whether internal controls appropriately control risks. Completing risk assessments helps management identify current and emerging UDAP and UDAAP risks to prevent, self-identify, and address potential or actual issues. A well-designed risk assessment process is supported by an appropriate methodology that includes quantitative and qualitative data and evaluates risk across applicable products, services, lines of business, and bank activities, including

- third-party risk management.
- due diligence and change management practices for new activities, including products and services offered through third parties.
- incentive compensation programs.
- the bank’s consumer compliance program (policies and procedures, training, monitoring and audit, and customer complaint resolution process).
- the development and delivery of training, marketing materials, and account disclosures.
- loan servicing, account management, and collections.
- posting of deposit account transactions and processing overdrafts.

When evaluating a bank’s CMS, examiners should determine whether management has performed an adequate assessment of the bank’s UDAP and UDAAP risks and corresponding controls. The results of the bank’s risk assessments can provide examiners with an overview of bank products, services, practices, and controls that may be vulnerable to UDAP and UDAAP. UDAP and UDAAP may be represented in various risk assessments. For example, UDAP and UDAAP risks may be incorporated in compliance risk assessments for fair lending, fair banking, or consumer compliance, or UDAP and UDAAP may be identified in a bank’s operational risk assessments.

Third-Party Risk Management

> **Related “Compliance Management Systems” Booklet Section**
>
> - “CMS Components” > “Board and Management Oversight” > “Oversight and Commitment” > “Third-Party Risk Management”

Third-party risk management should be commensurate with the level of risk (including UDAP and UDAAP risks) and complexity of the third-party relationships and the bank's organizational structure. An effective third-party risk management process typically includes planning, due diligence, written contracts, monitoring, governance, contingency plans, documentation, and independent review.

Effective third-party risk management typically includes the following regarding UDAP and UDAAP risks:

- Planning and due diligence that assesses the potential for risks associated with UDAP and UDAAP issues (e.g., level of reliance on the third party by the bank, whether the third party interacts with bank customers directly, or the complexity of products or services offered by or through the third party).
- Ongoing monitoring of performance, complaints, and risks to detect possible UDAP and UDAAP issues over the course of the third-party relationship.
- Written contracts that include, among other things, detailed third-party compliance expectations and remedies and stipulations that third-party activities are subject to bank audit and OCC examination.
- Incorporating potential UDAP and UDAAP issues into the scope of independent reviews of the bank's third-party risk management processes.

When evaluating the bank's third-party risk management processes, examiners should consider whether the bank's third-party risk management process adequately identifies, measures, monitors, and controls the risk of potential UDAP and UDAAP issues posed by third parties.[16] Refer to appendix B of this booklet for UDAP and UDAAP risk indicators. The risk indicators apply to products and services offered by the bank directly or through a third party.

Change Management

Related "Compliance Management Systems" Booklet Section

- "CMS Components" > "Board and Management Oversight" > "Change Management"

UDAP and UDAAP prohibitions apply to all types of products, and to every stage of the product or service life cycle and associated activities, including marketing campaigns, product terms and conditions, servicing, and collections. Effective change management allows bank management to prepare for and support changes in areas such as product and service development and delivery, third-party relationships, and bank operations. Effective change management typically includes the following regarding UDAP and UDAAP risks:[17]

[16] Refer to OCC Bulletin 2013-29, OCC Bulletin 2017-7, and OCC Bulletin 2020-10 for more information regarding third-party risk management. Refer also to the "Third-Party Risk Management" section of the "Compliance Management Systems" booklet of the *Comptroller's Handbook*.

[17] Refer to OCC Bulletin 2017-43 for more information.

- Due diligence to assess UDAP and UDAAP risks in advance of engaging in new activities.
- Consideration of potential UDAP and UDAAP risks associated with higher-risk products or services, such as add-on products (e.g., travel clubs, disability insurance, credit life insurance, debt suspension agreements, debt cancellation contracts, fraud alert programs, and identity theft protection).
- An assessment of potential UDAP and UDAAP risks associated with deposit accounts, including the accuracy of disclosures and processes and controls for changing account disclosures, including timely updates and confirming that changes do not introduce UDAP or UDAAP issues.
- Reviewing the change after implementation to determine that actions taken have achieved planned results.
- Bank-wide involvement (e.g., audit, compliance, and business line functions) in the due diligence, risk assessment, and monitoring of new activities.
- Determining whether bank staff and, as applicable, third-party staff are qualified and receive adequate training in relation to changes.

When reviewing a bank's change management processes, examiners should assess whether the bank has adequate processes to review newly developed or modified advertising materials, marketing materials, processes, or operational systems for potential UDAP and UDAAP issues before deployment.

When reviewing a bank's processes for changing disclosures, examiners should determine whether the bank compares—before and after deployment—newly created or changed account disclosures and information with operational system settings or parameters to confirm consistency in how information is disclosed and how the operational system actually maintains an account or performs a transaction.

Refer to the "Marketing and Disclosures" section and appendix A of this booklet for more information regarding potential UDAP and UDAAP risk management and examples of red flags in relation to the bank's marketing and customer disclosure processes.

Incentive Compensation Programs

Banks' incentive compensation programs should not encourage imprudent risk-taking or actions, including those associated with UDAP or UDAAP issues. The level of board and management oversight over the bank's incentive compensation program should be based on the complexity and prevalence of the program. A sound incentive compensation program[18]

- provides employees incentives that appropriately balance risk and reward.
- is compatible with effective controls and risk management.
- is supported by strong corporate governance, including active oversight by the board.

[18] Refer to OCC Bulletin 2010-24, "Incentive Compensation: Interagency Guidance on Sound Incentive Compensation Policies," for more information.

Incentive compensation programs can be designed to guard against UDAP and UDAAP risks by incorporating safeguards to prevent incentivizing inappropriate sales practices, such as opening new accounts without a customer's knowledge or authorization or taking advantage of vulnerable populations. Incentive compensation programs must comply with applicable laws and regulations.[19]

When reviewing incentive compensation programs, examiners should assess how the programs

- are consistent with the bank's risk appetite.
- provide bank employees with incentives that appropriately balance risk and reward.
- include measurable performance goals.
- are compatible with effective controls and risk management.
- are designed to guard against customer harm.
- are supported by strong corporate governance, including active and effective oversight by the bank's board to reduce the likelihood of potential UDAP or UDAAP issues.

Consumer Compliance Program

Related "Compliance Management Systems" Booklet Section

- "CMS Components" > "Consumer Compliance Program"

The bank's consumer compliance program should be commensurate with the bank's size, complexity, and risk profile. An effective consumer compliance program adequately identifies, measures, monitors, and controls the bank's UDAP and UDAAP risks through components including policies and procedures, training, monitoring and audit, and customer complaint response processes.

Policies and Procedures

Related "Compliance Management Systems" Booklet Section

- "CMS Components" > "Consumer Compliance Program" > "Policies and Procedures"

Effective policies and procedures, including those for the bank's third-party risk management process, provide guidelines and standards for managing UDAP and UDAAP risk in the bank's products, services, and activities. The scope and detail of the bank's UDAP- and UDAAP-related policies and procedures vary depending on the bank's size, complexity, and risk profile. A small or noncomplex bank, for example, may have basic policies and procedures that address the significant areas of UDAP and UDAAP risk, while a larger or more complex bank with intricate or varied products, services, and activities would have more detailed UDAP- and UDAAP-related policies and procedures. The following are examples of policies that could address the bank's UDAP and UDAAP risk, as applicable:

[19] 12 CFR 1026.36(d), for example, prohibits certain payments to mortgage originators.

- Lending policies, including policies for underwriting, account management, and collections.
- Policies governing deposit products.
- Policies regarding deposit-related credit, including overdraft policies.
- Third-party risk management policies.
- Marketing policies, including policies for promotional offers and policies for direct or target marketing.
- Incentive compensation policies.
- Complaint resolution policies, including policies for monitoring complaints and reporting complaint trends.
- Whistleblower policies.

Training

Related "Compliance Management Systems" Booklet Section

- "CMS Components" > "Consumer Compliance Program" > "Consumer Compliance Training"

Training should be timely and tailored to the bank's risks and employees' job functions. When a bank offers products and services through third parties, it is important for bank management to consider whether these third parties provide appropriate training to their employees. Relevant UDAP and UDAAP training content may include

- UDAP and UDAAP compliance requirements, which may include examples of potential UDAP and UDAAP issues and risk indicators.
- the bank's policies, procedures, and internal controls.
- product and service terms, conditions, and features.
- complaint resolution processes.
- whistleblower processes.

Refer to appendixes A and B of this booklet for more information regarding UDAP and UDAAP red flags and risk indicators that may need to be incorporated into the bank's training.

Monitoring and Audit

Related "Compliance Management Systems" Booklet Section

- "CMS Components" > "Consumer Compliance Program" > "Monitoring and Audit"

Depending on the bank's size, complexity, and risk profile, testing is usually performed through compliance or audit functions to determine whether actual practices and the bank's operating systems are effective in managing UDAP and UDAAP risks and avoiding UDAP and UDAAP issues. Complex banks, or banks with high risk profiles, generally have more advanced risk management and controls, including lines of business that perform front-line testing, which is validated by independent second- or third-line functions (e.g., independent risk management and internal audit). All banks should have adequate risk-based controls in place to prevent and detect UDAP and UDAAP issues. Examples of items commonly evaluated within the scope of monitoring or audit include the following:

- Policies and procedures.
- Internal controls, both manual and automated.
- Training materials.
- Risk assessments.
- Contracts, product disclosures, marketing materials, sales scripts, and call recordings.
- Product or service delivery in conformance with stated objectives and customer disclosures.
- New activities[20] (e.g., product change control reviews).
- Third-party risk management processes.[21]
- Complaint resolution processes.
- Whistleblower processes.
- Issues management processes (the bank's processes for identifying, tracking, escalating, and resolving identified issues such as deficient practices, violations, or other weaknesses).

Appropriate monitoring and audit typically include transaction testing. For example, the bank's audit or compliance testing function may compare applicable disclosures with marketing materials, sales calls, and operations for consistency between disclosed information and how a product or service is marketed or what occurs through operational processing of related accounts or transactions. Additionally, the bank's audit or compliance testing function may also test whether the delivery of products and services is consistent with customer disclosures.

Customer Complaint Resolution Process

Related "Compliance Management Systems" Booklet Section

- "CMS Components" > "Consumer Compliance Program" > "Consumer Complaint Resolution Process"

Customer complaints can be an indicator of potential risk management weaknesses or other deficiencies, such as violations of laws or regulations. Complaints can reveal potential issues with a particular bank product, service, function, or department, or can identify opportunities to enhance customers' experience and understanding of bank products or services. Complaints can help banks assess services performed by third parties. An effective customer complaint resolution process includes steps to analyze complaint data and to detect and remediate concerns or problem areas, including potential UDAP or UDAAP issues. The bank's customer complaint resolution process typically varies with the bank's size, complexity, and risk profile. Adequate complaint resolution processes incorporate complaints

[20] Refer to OCC Bulletin 2017-43.

[21] Refer to OCC Bulletin 2013-29, OCC Bulletin 2017-7, and OCC Bulletin 2020-10.

regarding products and services offered across all lines of businesses, including those offered by third parties, as well as complaints from various channels (such as letters, phone calls, in person, regulators, third-party service providers, emails, and social media), commensurate with the bank's size, complexity, and activities.

Complaint resolution processes that do not adequately monitor and analyze complaint data across all lines of business and activities increase the likelihood of a potential UDAP or UDAAP issue to go unnoticed by the bank. Similarly, a lack of independent review of the effectiveness of the bank's complaint resolution processes may also increase the likelihood of potential UDAP or UDAAP issues to go unnoticed.

When assessing the adequacy of the bank's complaint activities, examiners should determine whether

- processes for reviewing and responding to complaints appropriately consider potential UDAP and UDAAP issues.
- processes appropriately escalate and resolve higher risk complaints.
- appropriate root cause analysis is conducted for substantive complaints, even if there are only a small number of substantive complaints.
- appropriate corrective action is implemented when root cause analysis of complaint data indicates deficiencies in bank processes or controls.
- management adequately reviews or analyzes complaint data to identify potential UDAP and UDAAP issues. Methods used by management may include
  – performing trend and pattern analyses of complaint data for common complaints associated with specific products and services and across lines of business and third parties and various channels.
  – using key word searches or text analytics (such as "unfair," "misleading," "deceptive," "abusive," or "cheat") to identify potential UDAP and UDAAP issues.
  – retrieving complaint data and information from all relevant sources, including bank employees and customers, regulators, the Better Business Bureau, social media, and any third parties that provide products and services on the bank's behalf.
- audit's scope includes a review of the bank's complaint resolution processes.

When reviewing complaints or complaint data, examiners should

- review complaint data from the OCC's Customer Assistance Group, the bank, and, as applicable, the CFPB.
- review data with the understanding that customer complaints are a *potential* indicator of risk management weaknesses or other deficiencies, such as violations of laws or regulations.
- assess the volume, themes, and trends of customer complaints.
- consider complaints across all lines of business and activities, including those involving third parties.
- consider expanded review of complaints when complaint data indicate potential UDAP or UDAAP issues, such as those that indicate customer misunderstanding or the bank's omission or misrepresentation of information.

Appendix A of this booklet includes more information regarding customer complaints as a potential indicator of UDAP or UDAAP issues. Additionally, appendix B of this booklet provides examiners with UDAP and UDAAP risk indicators, including risk indicators related to customer complaints.

Bank Operations

The bank's CMS should consider all products and services offered or serviced by the bank (including those offered through a third party) and the operations associated with those products and services. For example, when assessing the adequacy of the bank's CMS, examiners should consider whether the bank's processes related to marketing and disclosures and to loan servicing, account management, and collections are commensurate with the bank's UDAP and UDAAP risks. In addition to the "Marketing and Disclosures" and "Loan Servicing, Account Management, and Collections" sections of this booklet, examiners can also refer to appendixes A and B of this booklet for more information regarding UDAP and UDAAP red flags and UDAP and UDAAP risk indicators.

Marketing and Disclosures

Sound bank processes for developing, implementing, and maintaining marketing and customer disclosures typically include an evaluation of UDAP and UDAAP risks by qualified staff (e.g., compliance, legal, or audit), regardless of whether marketing and advertising materials and messages are in print or digital format or communicated verbally by bank staff. Sound bank processes for marketing and disclosures typically include

- communicating accurate and understandable information to customers.
- maintaining appropriate internal controls over the development, modification, and deployment of marketing and advertising materials.
- reviewing materials for clarity, compliance, and accuracy.
- testing consistency among disclosures, marketing materials, sales calls, and the way operational systems function in delivering products and services.

When reviewing a bank's marketing materials, examiners should assess whether materials

- make representations that are factual.
- refrain from relying on fine print, separate statements, or inconspicuous disclosures to correct more prominent statements that are potentially misleading.
- clearly disclose applicable limitations, conditions, or restrictions in the marketing materials, particularly when they advertise a special promotion or use terms such as "pre-approved" or "guaranteed."[22]

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[22] Triggering terms used in marketing materials may also require additional disclosure of information under other consumer compliance laws or regulations. For instance, Regulation Z (12 CFR 1026.16 and 1026.24) and Regulation DD (12 CFR 1030.8) require the disclosure of additional information when advertisements include certain terms.

- adequately explain and clearly represent the costs of optional or related products (such as overdraft protection).
- avoid promoting terms (e.g., pricing or interest rates) that are unavailable to most customers or are unrepresentative examples.
- include contact information for customers who may have questions or need additional information.

When reviewing disclosures for potential UDAP and UDAAP issues, examiners should assess whether the bank's disclosures are clear and accurate with respect to all material terms and conditions, particularly

- when contract provisions permit changes in terms of the agreement.
- points and other charges that will be assessed as part of home-secured loans.
- rates, fees, and other terms and conditions related to subprime loans[23] and non-traditional lending products such as vehicle title loans and tax refund anticipation loans.
- terms and conditions related to insurance offered in connection with loans.
- prepayment penalties, temporary introductory terms, or terms that are not available as advertised to all consumers.
- whether loans are covered by the Home Ownership and Equity Protection Act.[24]
- terms and conditions related to reverse mortgages.[25]
- rates, fees, and other charges related to credit cards, including credit cards designed to rehabilitate the credit history of borrowers (e.g., secured credit cards).
- nature or extent of cosigner liability.[26]
- circumstances when overdrafts will be paid and the charges that will apply for overdraft protection programs.[27]

The bank is responsible for clear and accurate disclosures even when disclosures are prepared by a third party.

Loan Servicing, Account Management, and Collections

Sound UDAP and UDAAP risk management includes evaluating UDAP and UDAAP risks in the bank's loan servicing, account management, and collection activities. UDAP and UDAAP risks related to loan servicing, account management, and collections increase when the bank or its third parties do not

[23] Refer to OCC Bulletin 2001-6, "Subprime Lending: Expanded Guidance for Subprime Lending Programs" and OCC Bulletin 2007-26, "Subprime Mortgage Lending: Statement on Subprime Mortgage Lending."

[24] Refer to 15 USC 1639 and 12 CFR 1026.

[25] Refer to OCC Bulletin 2010-30, "Reverse Mortgages: Interagency Guidance."

[26] Refer to OCC Bulletin 2014-42, "Credit Practices Rules: Interagency Guidance Regarding Unfair or Deceptive Credit Practices."

[27] Refer to OCC Bulletin 2005-9, "Overdraft Protection Programs: Interagency Guidance."

- mail periodic statements in a timely manner, which may contribute to a customer's late payments.
- accurately and clearly disclose the amounts due and associated fees or charges on the periodic statements.
- state the due date on the periodic statement conspicuously and in a manner consistent with any contractual grace period.
- prevent the charging of customers for products or services they did not explicitly purchase or sign up for, such as various credit protection programs or insurance.
- maintain and adhere to adequate policies, processes, and controls for crediting customer payments in a timely manner.
- clearly tell customers when and if monthly payments are applied to fees, penalties, or other charges before being applied to regular principal and interest.
- apply payments in excess of the required minimum payment first to balances with the highest interest rates when multiple advance tiers are present, except as otherwise required by law or regulation.
- prevent any representation to customers that suggest they may pay less than the minimum amount due without adequately disclosing the fees or other consequences of paying the reduced amount.
- use automated or virtual customer assistance services that easily or clearly allow customers to speak with a human representative of the bank when questions and billing inquiries are unanswered or have not been resolved via automated or virtual channels.
- maintain policies, processes, and controls to prevent disclosing customer debt or other information to third parties or individuals who are not responsible for the debt (e.g., a customer's parent, spouse, or coworker) without customer consent.
- discontinue contact with third parties or individuals related to the customer once notified by the third parties or other individuals that they do not have any location information about the customer.
- prevent repeated telephone calls to customers or relatives with the intent to annoy, abuse, or harass any person at the number called.
- clearly and conspicuously disclose customer usage or activity fees, such as fees for submitting a past due payment or fees charged for credit card transactions in excess of available credit.

UDAP and UDAAP risks also increase when the bank's loan workout and foreclosure practices do not adequately

- include policies, processes, and controls designed to avoid improper loan workouts and foreclosures (e.g., a loan workout program that results in equity stripping).
- manage third parties that support the bank's workout and foreclosure processes.
- process and validate foreclosure and other servicing documents throughout the foreclosure process.
- include information systems and practices to adequately store, track, and retrieve mortgage-related documents.
- allow for proper custody and control of borrower documents.

- include ongoing communication with borrowers and only offer loss mitigation options that are applicable to each borrower.
- coordinate between loss mitigation and foreclosure units to prevent inappropriate foreclosures.

Examination Procedures

This booklet contains expanded procedures for examining specific activities, products, or services that warrant extra attention beyond the core assessment contained in the "Community Bank Supervision," "Federal Branches and Agencies Supervision," and "Large Bank Supervision" booklets of the *Comptroller's Handbook*. Examiners determine which expanded procedures to use, if any, during examination planning or after drawing preliminary conclusions during the core assessment.

Scope

The OCC has supervisory and enforcement authority for the UDAP provisions in section 5 of the FTC Act for all OCC-supervised banks. The OCC has supervisory and exclusive enforcement authority for the UDAAP provisions in sections 1031 and 1036 of Dodd–Frank for banks with total assets of $10 billion or less. Under Dodd–Frank, the CFPB has exclusive supervisory authority and primary enforcement authority over insured depository institutions with total assets over $10 billion for "Federal consumer financial laws," including the UDAAP provisions of sections 1031 and 1036 of Dodd–Frank. Examiners should consider the appropriateness of these examination procedures when scoping the UDAP and UDAAP risk management examination. For example, when scoping a UDAAP risk management examination at a bank with total assets exceeding $10 billion, examiners should limit their scope to those procedures that focus on evaluating the effectiveness of the bank's CMS in managing risks and not those procedures that call for reviews of documents or transaction testing.

Examiners should consider UDAP and UDAAP risks, as appropriate, when scoping and conducting supervisory activities, such as examinations (e.g., fair lending examinations or examinations involving the bank's retail lending, non-deposit investment products, other real estate owned, credit card, deposit related credit, installment lending, model risk management, bank information technology, and third-party risk), customer complaint reviews, or whistleblower investigations. Additionally, supervisory strategies may need to be adjusted to address heightened UDAP or UDAAP risks identified during ongoing supervision or other supervisory activities (e.g., learning the bank intends to offer a new product or service that poses UDAP or UDAAP risk).

These procedures are designed to help examiners tailor the examination to each bank and determine the scope of the UDAP and UDAAP risk management examination. This determination should consider work performed by internal and external auditors and other independent risk control functions and by other examiners on related areas. Examiners need to perform only those objectives and steps that are relevant to the scope of the examination as determined by the following objectives. Seldom will every objective or step of the expanded procedures be necessary.

Objective: To determine the scope of the UDAP and UDAAP risk management examination and identify examination objectives and activities necessary to meet the needs of the supervisory strategy for the bank.

1. Review, as applicable, the following sources of information and note any potential areas with heightened risk for UDAP or UDAAP and any previously identified problems that require further review or follow-up:

    - Supervisory strategy.
    - Examination scope memorandum.
    - The OCC's supervisory information systems.
    - Previous reports of examination (ROE), supervisory letters, and work papers.
    - Litigation reports.
    - Internal and external audit reports and work papers.
    - Bank management's responses to previous ROEs, supervisory letters, and audit reports.
    - Reports detailing the status of open audit, regulatory, and self-identified issues.
    - Customer complaints and litigation. Examiners should review customer complaint data from the OCC's Customer Assistance Group, the bank, and the CFPB (when applicable). When possible, examiners should review and leverage complaint analysis already performed during the supervisory cycle to avoid duplication of effort.
    - Whistleblower referrals received by the OCC or the bank. Coordinate with the examiner-in-charge (EIC), as the EIC may already possess this information.

2. Obtain and review policies, processes, and reports that bank management uses to identify and manage UDAP and UDAAP risks, including internal risk assessments, organizational charts, and process flow charts.

3. Review a listing of the bank's products and services, including those offered by or with a third party, and identify any that may have heightened UDAP or UDAAP risks, such as

    - fee-based overdraft protection. (Refer to OCC Bulletin 2005-9, "Overdraft Protection Programs: Interagency Guidance.")
    - subprime loans. (Refer to OCC Bulletin 2001-6, "Subprime Lending: Expanded Guidance for Subprime Lending Programs," and OCC Bulletin 2007-26, "Subprime Mortgage Lending: Statement on Subprime Mortgage Lending.")
    - loans with interest rates or fees far exceeding the true risk and cost of making the loan.
    - secured credit cards. (Refer to the "Credit Card Lending" booklet of the *Comptroller's Handbook*.)
    - reverse mortgages. (Refer to OCC Bulletin 2010-30, "Reverse Mortgages: Interagency Guidance.")
    - "optional" insurance or other "add-on" products.
    - products structured in ways that could trigger multiple charges or fees in a short time frame or for single occurrences, such as a fee charged to process a late payment (in

addition to any standard late fee charged) or fees charged for credit card transactions that exceed an available credit limit.
- credit monitoring and credit repair products.
- vehicle title loans.
- tax refund anticipation loans.
- products offering a special promotion.

4. Account documentation, such as checklists, disclosure templates, and advertising and marketing materials. For example, a review of advertising materials could reveal a bank product with heightened UDAP or UDAAP risks (such as an account advertised as "totally free").

5. Review any news from local and national media sources to determine if any information reflects potential UDAP or UDAAP risks.

6. In discussions with bank management, determine if there have been any significant changes (for example, in policies, processes, personnel, control systems, third-party relationships, products, services, delivery channels, volumes, markets, and geographies) and whether any such changes warrant further review based on potential UDAP or UDAAP risks, including if the OCC should review due diligence documentation or conduct transaction testing of new activities.

7. Based on an analysis of information obtained in the previous steps, as well as input from the EIC, determine the scope and objectives of the UDAP and UDAAP risk management examination.

8. Select from the following examination procedures the necessary steps to meet examination objectives and the supervisory strategy. Examiners may refer to appendix A of this booklet for more information while performing selected procedures (e.g., procedures that assess the adequacy of specific bank processes, such as procedures related to evaluating the bank's complaint resolution processes). If weaknesses in the bank's UDAP- or UDAAP-related audit(s) are identified, examiners should consider expanding the scope of the examination.

Quantity of Risk

Conclusion: The quantity of each associated risk is (low, moderate, or high).

Objective: To determine the quantity of risks associated with UDAP and UDAAP. Examiners may refer to appendix B for factors to consider in the assessment of quantity of risk.

1. Consider information related to the quantity of risk from the "Scope" objective.

2. Analyze the quantity of compliance, credit, operational, reputation, and strategic risks. Items for consideration in your analysis may include, for example, the products, markets, geographies, technologies, communication channels, transaction volumes, size of the exposures, quality metrics, concentrations, and third-party relationships.

3. Assess the effect of external factors, including economic, industry, competitive, and market conditions.

4. Assess the effect of potential legislative, regulatory, accounting, and technological changes.

5. Consider the nature, volume, and trend of customer complaints. Review analysis of complaint data used in the "Scope" objective.

6. Consider the bank's history of UDAP and UDAAP compliance program weaknesses or violations, including violations resulting in fines, CMPs, damages, or contract voidance.

7. Consider the bank's level of outsourcing operational functions to third parties (e.g., marketing and sales of products and services, account management and communications, payment processing, and collections).

8. Consider the nature, level, and trend of operational losses, such as losses resulting from inadequate or failed internal processes or systems or the misconduct or errors of bank personnel.

Quality of Risk Management

Conclusion: The quality of risk management is (strong, satisfactory, insufficient, or weak).

The conclusion on risk management includes all risks associated with UDAP and UDAAP.

Policies

Policies are statements of actions adopted by a bank to pursue certain objectives. Policies guide decisions, often set standards (on risk limits, for example), and should be consistent with the bank's underlying mission, risk appetite, and core values. Policies should be reviewed periodically for effectiveness and approved by the board of directors or designated board committee.

Objective: To determine whether the board has adopted effective policies that are consistent with safe and sound banking practices and commensurate with the bank's UDAP and UDAAP risks.

1. Evaluate relevant policies to determine whether they provide appropriate guidance for managing the bank's UDAP and UDAAP risks and are consistent with the bank's mission, values, and principles. Examples of UDAP- and UDAAP-related policies may include:

    - Lending policies, including policies for underwriting, account management, and collections.
    - Deposit product policies.
    - Policies regarding deposit-related credit, including overdraft policies.
    - Third-party risk management policies.
    - Marketing policies, including policies for promotional offers and policies for direct or target marketing.
    - Incentive compensation policies.
    - Complaint resolution policies, including policies for monitoring complaints and reporting complaint trends.
    - Whistleblower policies.

2. Determine whether policies establish risk limits or positions and delineate prudent actions to be taken if the limits are exceeded. Examples of policies that can establish risk limits or positions may include:

    - Underwriting policies.
    - Policies that communicate allowable marketing strategies (e.g., targeted marketing of specific products or services or to specific geographies or customer types).

- Change management policies that communicate acceptable products or services to offer.
- Third-party risk management policies that identify risk-based bank activities, such as planning and due diligence and ongoing monitoring.
- Incentive compensation policies that define expectations for establishing performance goals and payout amounts.
- Complaint identification and resolution policies.
- Training policies that establish training expectations based on job function and risk exposure.
- Monitoring and audit policies that establish expectations (e.g., timing, scope, transaction testing, and reporting).

3. Determine whether the board of directors, or an appropriate board committee, periodically reviews and approves the bank's UDAP- and UDAAP-related policies.

Processes

Processes are the procedures, programs, and practices that impose order on a bank's pursuit of its objectives. Processes define how activities are carried out and help manage risk. Effective processes are consistent with the underlying policies and are governed by appropriate checks and balances (such as internal controls).

Objective: Determine whether the bank's UDAP- and UDAAP-related processes are consistent with underlying board approved policies and are commensurate with the bank's UDAP and UDAAP risks.

1. By discussing with management and reviewing the bank's CMS, determine whether the bank's CMS adequately identifies, measures, monitors, and controls UDAP and UDAAP risks by incorporating components such as:

- Sufficient board and management oversight.
- Processes to assess UDAP and UDAAP risks.
- Testing of compliance with UDAP and UDAAP prohibitions.
- Effective management and reporting of issues.
- Adequate staff training for identifying and controlling UDAP and UDAAP risks.
- Change management processes that consider the potential for UDAP and UDAAP risks.
- Third-party risk management processes to avoid, detect, and address the risk of UDAP and UDAAP in the bank's third-party relationships.
- Complaint resolution processes.
- Whistleblower referral reviews.

Objective: To determine whether the bank has processes in place to define how UDAP and UDAAP risk management activities are carried out.

1. By discussing with management and reviewing applicable documentation (e.g., written procedures and bank training materials), evaluate whether processes are effective, consistent with underlying policies, and effectively communicated to appropriate staff.

2. Determine whether appropriate internal controls are in place and functioning as designed.

Objective: To determine whether the bank has an effective customer complaints response and analysis process that is commensurate with its size, complexity, and risk profile and includes complaints across all applicable channels and for products or services offered or performed by subsidiaries, affiliates, and third parties.

1. Determine whether the bank's customer complaints response and analysis process allows bank personnel to identify, monitor, and address potential UDAP and UDAAP issues. Refer to the "Compliance Management Systems" booklet of the *Comptroller's Handbook* for more information.

Objective: To determine whether the bank's third-party risk management is sufficient to identify and manage the risk of UDAP or UDAAP issues posed by the conduct of third parties.

1. After discussing with management and reviewing applicable policies, procedures, and processes, determine whether the bank's third-party risk management processes include risk-based components such as

   - assessing the potential for UDAP or UDAAP issues during planning and due diligence phases of the third-party relationship life cycle.
   - engaging in ongoing monitoring to help identify, resolve, and prevent possible UDAP or UDAAP issues over the course of the third-party relationship life cycle.
   - confirming that contracts adequately detail third-party compliance expectations and remedies and include stipulations that third-party activities are subject to bank audit and OCC examination oversight.
   - verifying that contracts include provisions for the bank to access customer data after contract termination.
   - evaluation of the third party's compliance program and whether the bank can rely on the third party's program for complying with UDAP and UDAAP.
   - scoping potential UDAP or UDAAP issues into independent reviews of the bank's third-party risk management processes.

Objective: To determine whether the board and management have implemented an adequate change management program that allows the bank to prepare for and support enterprise-wide effects of organizational change.

1. After discussing with management and reviewing applicable policies, procedures, and processes, evaluate the effectiveness of the bank's change management processes in

- reviewing newly developed or modified advertising materials, marketing materials, disclosures, product features, processes, or operational systems before deployment to identify and address potential UDAP and UDAAP issues.
- comparing, prior to deployment, newly created or changed account disclosures and information with operational system settings or parameters to confirm consistency between disclosed information and how the operational system maintains the related account or performs the related transaction in practice.
- monitoring applicable third-party relationships when change also affects products or services provided or offered by the third party.

Objective: To determine whether the bank has appropriate processes to effectively manage specific UDAP and UDAAP risks in the bank's products and services, including those offered through third-party relationships.

Examiners should seek guidance from, as appropriate, the supervisory office, lead experts, Bank Supervision Policy, and OCC legal counsel if, after completing any of the procedures under this objective, they determine

- the bank is engaging in any of the practices noted in this objective (e.g., lending practices, such as equity stripping or loan flipping, or deposit account disclosure practices that are unclear as to when overdraft fees will be incurred or that differ from the bank's transaction posting practices.
- the bank's policies, processes, or internal controls are inadequate in controlling UDAP and UDAAP risks.

Examiners can also refer to the UDAP and UDAAP legal standards provided in appendix C of this booklet to assist in assessing whether a specific act or practice may constitute a potential UDAP or UDAAP issue.

1. By discussing with bank management and reviewing lending policies and procedures, determine whether the bank controls UDAP and UDAAP risks by avoiding certain lending practices, such as the following:

    - "Equity stripping," which occurs when a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the loan's terms, based on the borrower's current and expected income, current obligations, employment status, and other relevant financial resources. The lender is effectively counting on its ability to seize the borrower's equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit.
    - "Loan flipping," which is frequent refinancings that result in little or no economic benefit to the borrower and are undertaken with the primary or sole objective of generating additional loan fees, prepayment penalties, and fees from the financing of credit-related products.

- Targeting inappropriate or excessively expensive credit products to persons who are not financially sophisticated or who may be otherwise vulnerable to unfair or deceptive practices, such as older borrowers, and to persons who could qualify for mainstream credit products and terms.
- Inadequate disclosure or explanation of the material terms, true costs, and risks of loan transactions.
- Offering loan terms and structures designed to make it more difficult or impossible for borrowers to reduce their indebtedness, such as negative amortization.
- "Padding" fees, which is charging customers unearned, concealed, or undisclosed fees.
- "Fee packing," which is including excessive and sometimes "hidden" fees in the amount financed.
- Offering balloon payment loans that may conceal the true cost of the loan financing and may force borrowers into costly refinancing or foreclosure situations.
- Collecting up-front single-premium credit insurance costs—life, disability, or unemployment.
- Refinancing of special subsidized mortgages that result in the loss of beneficial loan terms.

Refer to OCC Advisory Letter 2003-2, "Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices" and to OCC Bulletin 2020-54, "Interagency Lending Principles for Offering Responsible Small-Dollar Loans," for more information (these documents apply to both national banks and FSAs).

2. By discussing with bank management and reviewing applicable policies and procedures, determine whether the bank's development and implementation of marketing materials and customer disclosures controls UDAP and UDAAP risks by

   - communicating accurate and understandable information to customers.
   - maintaining appropriate internal controls over the development, modification, and deployment of marketing and advertising materials.
   - reviewing materials for clarity, compliance, and accuracy.
   - testing consistency among disclosures, marketing materials, sales calls, and the way operational systems function in delivering products and services.

3. By discussing with bank management and reviewing applicable policies and procedures, determine whether the bank's loan servicing, account management, and collection activities control UDAP and UDAAP risks by

   - mailing periodic statements in a timely manner.
   - accurately and clearly disclosing the amounts due and associated fees or charges on the periodic statements.
   - stating the due date on the periodic statement conspicuously and in a manner consistent with any contractual grace period.

- implementing internal controls to prevent the charging of customers for products or services they did not explicitly purchase or sign up for, such as credit protection programs or insurance.
- implementing internal controls for crediting customer payments in a timely manner.
- clearly telling customers when and if monthly payments are applied to fees, penalties, or other charges before being applied to regular principal and interest.
- applying payments in excess of the required minimum payment first to balances with the highest interest rates when multiple advance tiers are present, except as otherwise required by law or regulation.
- preventing any representation to customers that suggest they may pay less than the minimum amount due without adequately disclosing the fees or other consequences of paying the reduced amount.
- using automated or virtual customer assistance services that easily or clearly allow customers to speak with a human representative of the bank when questions and billing inquiries are unanswered or have not been resolved via automated or virtual channels.
- maintaining internal controls to prevent disclosing customer debt or other information to third parties or individuals who are not responsible for the debt (e.g., a customer’s parent, spouse, or coworker) without customer consent.
- discontinuing contact with third parties or individuals related to the customer once notified by the third parties or other individuals that they do not have any location information about the customer.
- preventing repeated telephone calls to customers or relatives with the intent to annoy, abuse, or harass any person at the number called.
- clearly and conspicuously disclosing customer usage or activity fees, such as fees for submitting a past due payment or fees charged for credit card transactions in excess of available credit.

4. By discussing with bank management and reviewing applicable policies and processes, determine whether the bank’s loan workout and foreclosure practices control UDAP and UDAAP risks by

- incorporating controls to manage third parties that support the bank’s workout and foreclosure processes.
- emphasizing accuracy and quality in processing and validating foreclosure and other servicing documents throughout the foreclosure process.
- maintaining information systems and practices to adequately store, track, and retrieve mortgage-related documents.
- engaging in proper custody and control of borrower documents.
- maintaining ongoing communication with borrowers and only offering loss mitigation options that are applicable to each borrower.
- coordinating between loss mitigation and foreclosure units to prevent inappropriate or premature foreclosures.

5. By discussing with bank management and reviewing deposit account policies and procedures, determine whether the bank controls UDAP and UDAAP risks by avoiding certain deposit account practices, such as

   - advertisements or account disclosures that are vague or unclear as to requirements for avoiding maintenance or service fees.
   - account disclosures that are unclear as to when overdraft fees will be incurred or that differ from the bank's actual transaction posting practices.
   - advertisements or account disclosures that promote bonuses or premiums for the opening of a new account but do not clearly and conspicuously disclose any requirements for obtaining the bonus or premium.
   - deposit accounts that are promoted as having "no fees" if fees may be charged in relation to other linked products or services, such as automated teller machine (ATM) fees that may be charged when the consumer uses a linked ATM or debit card to obtain cash at an ATM not owned by the bank.

6. By discussing with management and evaluating general observations made throughout this examination activity, determine whether management controls UDAP and UDAAP risks by avoiding practices such as

   - marketing that targets excessively expensive products to the elderly, young people, LEP individuals, or financially distressed individuals.
   - marketing or collection practices that result in excessive fees.
   - collection practices that could harass customers.
   - billing practices that could result in excessive fees.

7. By discussing with management and evaluating general observations made throughout the current supervisory cycle, in addition to this examination activity, determine whether the bank has established adequate internal controls to control UDAP and UDAAP risks associated with products or services that may carry higher risk, such as ancillary credit-related add on products (e.g., identity theft protection or debt cancellation contracts) by

   - maintaining policies, processes, and controls to govern higher risk products or services, including products or services offered by or through third parties.
   - incorporating complaints (including complaints received by or about third parties) related to higher risk products or services into the bank's customer complaint resolution and analysis process.
   - reviewing marketing materials and sales scripts for clarity, compliance, and accuracy.
   - testing consistency between disclosures and the way operational systems function in delivering products and services.

Objective: To determine whether the board and management provide adequate oversight and are provided sufficient information to evaluate the bank's UDAP and UDAAP risk management and the effectiveness of the bank's CMS as it relates to UDAP and UDAAP.

1. After discussing with management and reviewing board minutes, determine whether

   - the board appropriately reviews and deliberates on meeting agenda items related to UDAP and UDAAP.
   - management regularly reviews, and the board approves, UDAP- and UDAAP-related policies, as appropriate.
   - UDAP- and UDAAP-related risk assessments, reports, and audit and monitoring reports provided to the board and management are accurate, timely, and presented in a format to allow for effective oversight.
   - the board periodically reevaluates information it receives to determine it has sufficient information to make informed decisions, including decisions regarding the effectiveness of the bank's CMS as it relates to UDAP and UDAAP and to provide credible challenge to management's decisions and recommendations.

Determine whether the board and management monitor UDAP- and UDAAP-related issues for adequate and timely resolution.

Personnel

Personnel are the bank staff and managers who execute or oversee processes. Personnel should be qualified and competent, have clearly defined responsibilities, and be held accountable for their actions. They should understand the bank's mission, risk appetite, core values, policies, and processes. Banks should design compensation programs to attract and retain personnel, align with strategy, and appropriately balance risk-taking and reward.

Objective: To determine management's ability to supervise the bank's UDAP and UDAAP risk management activities (including the bank's third-party risk management process) in a safe and sound manner.

1. Given the scope and complexity of the bank's UDAP and UDAAP risks, assess the management structure and staffing. Consider the following:

   - The expertise, training, and number of staff members.
   - Whether reporting lines encourage open communication and limit the chances of conflicts of interest.
   - The level of staff turnover.
   - The use of outsourcing arrangements.
   - Capability to address identified deficiencies.
   - Responsiveness to regulatory, accounting, industry, and technological changes.

2. Assess performance management and compensation programs. Consider whether these programs measure and reward performance that aligns with the bank's strategic objectives and risk appetite.

   If the bank offers incentive compensation programs, assess how the programs

- are consistent with the bank’s risk appetite.
- provide bank employees with incentives that appropriately balance risk and reward.
- include measurable performance goals.
- are compatible with effective controls and risk management.
- are designed to guard against customer harm.
- are supported by strong corporate governance, including active and effective oversight by the bank’s board to reduce the likelihood of potential UDAP or UDAAP issues.

An inadequately managed incentive compensation program is not itself a UDAP or UDAAP issue. Weaknesses in the bank’s incentive compensation programs, however, could encourage imprudent risk-taking or actions, including those associated with UDAP or UDAAP issues.

Objective: To determine whether management provides appropriate UDAP and UDAAP training to bank staff and, as applicable, whether management ensures the bank reviews the adequacy of training provided by third-party service providers to the third party’s staff.

1. Review the bank’s training materials related to UDAP and UDAAP and determine if training

   - covers legal prohibitions.
   - is tailored to employees’ job responsibilities.
   - covers relevant policies and processes.
   - covers terms and conditions of products and services offered.
   - informs employees of the bank’s processes for reporting suspected UDAP and UDAAP issues.
   - is completed by applicable staff in a timely manner, with delinquencies sufficiently monitored and escalated.

Control Systems

Control systems are the functions (such as internal and external audits and quality assurance) and information systems that bank managers use to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel. Control functions should have clear reporting lines, sufficient resources, and appropriate access and authority. Management information systems (MIS) should provide timely, accurate, and relevant feedback.

Objective: To determine whether the bank has systems in place to provide accurate and timely assessments of its UDAP and UDAAP risks.

1. Evaluate the effectiveness of monitoring systems to identify, measure, and track exceptions to policies and established limits and to evaluate whether UDAP or UDAAP risks exist in any trends or patterns, such as

- fee refunds in excess of established limits that may indicate potential customer misunderstanding or inconsistencies between disclosures and operational systems.
- providing promotional rates or pricing to nonqualifying customers indicating potential lack of clarity in disclosing customer requirements for receiving the promotional offer.

2. Determine whether MIS provide timely, accurate, and useful information to evaluate risk levels and trends in the bank’s UDAP and UDAAP risk management activities.

Objective: To determine whether internal audit staff adequately tests the effectiveness of the bank’s UDAP and UDAAP internal controls on a periodic basis.

1. Obtain and review audit reports and work papers related to compliance with UDAP and UDAAP prohibitions. Determine whether

   - the frequency of audit(s) is appropriate (including review of implemented corrective actions related to previously identified issues).
   - the scope of audits addresses the provisions of section 5 of the FTC Act and sections 1031 and 1036 of Dodd–Frank.
   - audits include risk-based transaction testing that covers relevant products, services, and lines of business, including products or services offered in connection with third parties.
   - transaction testing samples are of sufficient size and are relevant to the area subject to testing.
   - the frequency of transaction testing is appropriate based on associated risks.
   - the work performed is accurate.
   - UDAP and UDAAP issues and their causes are included in reports to management and considered by the board.
   - management has taken corrective actions to follow up on previously identified issues.

Objective: To determine whether management has implemented adequate UDAP and UDAAP risk management and internal controls over the bank’s technology and automated systems used for the delivery of customer products or services, such as systems that generate disclosures or calculate and apply interest rates or fees.

1. By discussing with management and reviewing applicable documentation (e.g., bank policies, written procedures, and audit and compliance testing reports or results) regarding the bank’s consumer compliance-related UDAP or UDAAP systems and applications, determine whether management

   - applies appropriate general technology controls related to confidentiality, integrity, and availability of the systems and data.
   - completes sufficient testing and monitoring of automated processes to be able to rely on the accuracy of the outcomes, calculations, and disclosures generated.

- includes systems and applications in its change management processes to retest results when regulatory changes occur, when disclosures are updated or revised, or when changes are made to the systems.
- includes these systems and applications in the scopes of reviews and, as appropriate, audits, commensurate with the risk.

Conclusions

Conclusion: The aggregate level of each associated risk is
(low, moderate, or high).
The direction of each associated risk is
(increasing, stable, or decreasing).

Objective: To determine, document, and communicate overall UDAP and UDAAP findings and conclusions, as applicable.

1. Determine preliminary examination findings and conclusions and discuss with the EIC, including

   - quantity of associated risks.
   - quality of risk management.
   - aggregate level and direction of associated risks.
   - overall UDAP and UDAAP risk.
   - potential violations and other deficiencies.

   Follow internal OCC processes for escalating potential UDAP or UDAAP issues within the OCC (e.g., consultation with, as appropriate, the supervisory office, lead experts, Bank Supervision Policy, and OCC legal counsel).

   Examiners may refer to appendix B in this booklet for more information in determining the quantity of the bank's UDAP and UDAAP risk and the quality of the bank's UDAP and UDAAP risk management.

Summary of Risks Associated With UDAP and UDAAP				
Risk category	**Quantity of risk** (Low, moderate, high)	**Quality of risk management** (Weak, insufficient, satisfactory, strong)	**Aggregate level of risk** (Low, moderate, high)	**Direction of risk** (Increasing, stable, decreasing)
Operational				
Compliance				
Credit				
Reputation				
Strategic				

2. Discuss examination findings with bank management, including potential violations, deficient practices, and conclusions about risks and risk management practices. If necessary, obtain commitments for corrective action.

3. Compose conclusion comments, highlighting any issues that should be included in the report of examination or supervisory letter. If necessary, compose matters requiring attention and violation write-ups.

4. Update the OCC's supervisory information systems and any applicable report of examination schedules or tables.

5. Document recommendations for the supervisory strategy (e.g., what the OCC should do in the future to effectively supervise the bank's UDAP and UDAAP risk management, including time periods, staffing, and workdays required).

6. Update, organize, and reference work papers in accordance with OCC policy.

7. Appropriately dispose of or secure any paper or electronic media that contain sensitive bank or customer information.

Appendixes

Appendix A: UDAP and UDAAP Red Flags

Red flags are warnings or indictors of a potential problem that poses risk to the bank. Summarized in this appendix are nine UDAP- and UDAAP-related red flags to help examiners identify warning signs of potential areas with higher UDAP or UDAAP risks. This list of red flags is not all inclusive nor does the presence of these red flags prove the existence of UDAP or UDAAP issues.

Customer complaints received by the OCC or the bank: Customer complaints can indicate potential CMS weaknesses or other deficiencies, such as potential UDAP or UDAAP issues. Complaints can reveal a weakness in a particular bank product or service or can identify customers' dissatisfaction with or lack of understanding of bank products or services, including products offered or services performed by third parties. While the absence of complaints does not mean UDAP or UDAAP issues are not present, the presence of complaints can indicate underlying issues regarding the way products and services are offered and administered that may reflect the existence of UDAP or UDAAP issues. Even a single complaint can be an early warning sign of a problem. Similarly, high volumes or an increase in the number of complaints for a specific product, service, or business unit can indicate a key risk that should be reviewed in greater detail.

One example of how complaints may indicate UDAP or UDAAP issues is the presence of complaints alleging that customers did not understand the terms of a specific product or service. This type of complaint may be a red flag indicating potential deficiencies with disclosures or information provided by bank staff or, as applicable, third-parties, including those that are vague or inconsistent with bank-applied terms, conditions, or functionality of the related product or service. This is especially true when multiple customers make similar complaints about the same product or service. The perspective of a reasonable consumer is a relevant consideration for evaluating whether a representation, omission, act, or practice is potentially unfair or deceptive. Therefore, customer complaints alleging misrepresentations or misunderstandings may provide a window into the perspective of a reasonable consumer.

Whistleblower referrals received by the OCC or the bank: Whistleblower referrals made by bank employees can also indicate potential CMS weaknesses or other deficiencies, such as potential UDAP or UDAAP issues. Examples of whistleblower referrals that would indicate increased UDAP or UDAAP risk or the likelihood of potential UDAP or UDAAP issues include those that focus on the bank's marketing or sales practices or disclose the failure of the bank to deliver products or services as promised.

High levels of fee income: Fee income levels that are higher than average or significantly increasing could indicate the existence of products or services susceptible to UDAP or UDAAP. For example, higher than average or a significant increase in fee income derived from deposit-related credit (DRC) could indicate a potential UDAP or UDAAP issue if the bank fails to disclose the costs and fees associated with DRC or fails to adequately disclose transaction clearing policies and how those policies affect the total amount of fees associated with DRC.[28] Audit or monitoring activities that do not include periodic reviews of the bank's fee structure, disclosures, and related marketing materials for bank products and services that generate significant fee income could increase the bank's UDAP and UDAAP risk exposure.

High volume of charge-backs or refunds: Significant charge-backs or refunds of fees could also indicate the existence of products or services susceptible to UDAP or UDAAP. For example, a pattern of refunding fees associated with a specific product or service could indicate associated disclosures or marketing materials may be misleading or confusing. While not always evident in the bank's customer complaint resolution processes, charge-back and refund volumes may be relevant to and reflective of customer complaint volumes.

Inadequate inclusion of advertising, direct marketing, individual sales pitches, marketing scripts, and sales practices into the bank's CMS: Inadequate oversight and review of advertisements, marketing materials and scripts, and sales practices could increase UDAP and UDAAP risks by not identifying when information marketed or communicated to consumers is misleading, difficult to understand, or differs from actual disclosures or the functionality of a product or service.[29]

Weak servicing and collection practices: Inadequate policies, procedures, and controls related to servicing and collection activities, including activities performed by third parties, may increase the bank's UDAP and UDAAP risks. Servicing and collection practices that do not align with related policies and procedures or with actual account disclosures may also increase the bank's UDAP and UDAAP risks. Refer to the applicable sections of the following booklets of the *Comptroller's Handbook* for more information:

- "Credit Card Lending"
- "Deposit-Related Credit"
- "Homeownership Counseling Examination Procedures"
- "Installment Lending"
- "Loan Portfolio Management" (national banks)[30]
- "Real Estate Settlement Procedures Act"
- "Residential Real Estate"
- "Retail Lending"
- "Student Lending"
- "Truth in Lending Act"

Inconsistencies between account disclosures and bank operating systems: UDAP and UDAAP risks increase when account disclosures provided to customers are inconsistent with how the bank's operating system actually maintains an account or processes a transaction.

[28] Refer to the "Deposit-Related Credit" booklet of the *Comptroller's Handbook* for more information.

[29] Refer to OCC Advisory Letter 2002-3 for more information.

[30] For FSAs, refer to *Office of Thrift Supervision Examination Handbook* section 201, "Overview: Lending Operations and Portfolio Risk Management."

For example, account disclosures state a daily overdraft fee is charged each "business day" (defined in the disclosure as excluding Saturdays, Sundays, and federal legal holidays) an account is overdrawn, while the operating system is set up to charge the daily fee each "calendar" day the account is overdrawn. Similarly, account disclosures provide one method for determining when an account becomes overdrawn while the bank's operating system may use an altogether different method for determining whether an account is overdrawn.

Weaknesses in risk management or internal controls over higher risk products or services: Inadequate risk management or internal controls (including third-party risk management) over higher risk products or services, such as identity theft protection or debt cancellation add on products, may increase a bank's UDAP and UDAAP risks. Examples of inadequate internal controls may include:

- Inadequate use of billing or enrollment reports to monitor and verify customers are properly enrolled (including any required multi-enrollment steps) and are receiving full benefit of the services for which they are charged.
- Inadequate reporting or lack of monitoring to determine whether customers are enrolled and charged multiple times for the same product or service.
- Inadequate monitoring or review of denied debt-cancellation-product benefit claims to determine whether denials are appropriate or supported.
- Marketing materials and related disclosures are not reviewed by appropriate bank staff (e.g., legal, compliance, or audit) for clarity, compliance, and accuracy.
- Customer complaints regarding higher risk products or services (including complaints received by or about related third parties) are not adequately responded to or analyzed for root cause and possible increased risk.

Inadequate board and management oversight over incentive compensation programs: UDAP and UDAAP risks may increase as a result of inadequate board and management oversight over a bank's incentive compensation programs. For example, an incentive compensation program that is not aligned with the board's risk appetite or not balanced with adequate controls could encourage imprudent risk taking or actions by bank staff, such as opening new accounts for bank customers without the customers' knowledge or authorization.

Appendix B: UDAP and UDAAP Risk Indicators

Examiners may use the following UDAP and UDAAP risk indicators for determining a bank's quantity of risk and quality of risk management regarding UDAP and UDAAP.

Quantity of UDAP and UDAAP Risk Indicators

Examiners can use the following indicators when assessing quantity of UDAP and UDAAP risk.

Quantity of UDAP and UDAAP Risk Indicators		
Low	**Moderate**	**High**
Violations of UDAP, UDAAP, and consumer protection-related laws or regulations (e.g., Regulation B, Regulation Z, Regulation DD, and the Fair Debt Collection Practices Act [FDCPA]) or compliance program weaknesses are insignificant in number or do not exist.	Violations of UDAP, UDAAP, and consumer protection-related laws or regulations (e.g., Regulation B, Regulation Z, Regulation DD, and the FDCPA) or compliance program weaknesses exist and represent technical issues with some reimbursement to consumers that are resolved in a timely manner.	Violations of UDAP, UDAAP, and consumer protection-related laws or regulations (e.g., Regulation B, Regulation Z, Regulation DD, and the FDCPA) or compliance program weaknesses are significant in number, resulting in large consumer reimbursements or regulatory fines and penalties.
Volume of complaints, including complaints regarding or received by applicable third parties, is minimal.	Volume of complaints, including complaints regarding or received by applicable third parties, is moderate.	Volume of complaints, including complaints regarding or received by applicable third parties, is high.
Bank offers traditional mix of noncomplex lending, investment, and deposit products or services.	Bank offers traditional investment and deposit products or services and a mix of traditional and complex lending products or services, such as credit-related add-on products or services.	Bank offers a broad array of traditional and complex lending, investment, and deposit products or services, such as credit-related add-on products or services, non-deposit investment products, or overdraft protection products.
The bank does not offer products or services through third parties.	The bank has some reliance on third parties for offering products or services.	Third-party reliance for product or service offerings, including products or services with UDAP or UDAAP risk, is high.
Experienced, knowledgeable staff in key positions responsible for UDAP and UDAAP risk management. May be indicated by low staff turnover or frequency of training.	Experienced, knowledgeable staff in moderately critical positions responsible for UDAP and UDAAP risk management.	Inexperienced or untrained staff in key or high-volume critical positions responsible for UDAP and UDAAP risk management. High turnover or infrequent training may be an indicator.
Stable software and processes with low errors in technical requirements (e.g., disclosures, notices, APRs, and changes in indices).	Implementation of new software, or software conversions with some errors in technical requirements.	System conversions or software changes due to third-party changes or merger activity. Problems indicated by high level of errors in technical requirements.
Volume of products and services offered is reasonable considering	Volume of products and services offered is increasing considering	Volume of products and services offered is outpacing the bank's

Quantity of UDAP and UDAAP Risk Indicators		
Low	**Moderate**	**High**
the bank's financial strength and capability, and growth is stable.	the bank's financial strength and capability, and growth is steady.	financial strength and capability, and growth is unstable.
Limited or no marketing or advertising of products and services. Marketing campaigns are generally generic and not targeted to specific individuals or areas.	Limited marketing or advertising practices commensurate with strategic focus. Some marketing campaigns may focus on a specific product or service or may be targeted to specific individuals or areas.	Marketing and advertising is conducted through multiple channels (e.g., branch network, internet, and third parties). Marketing campaigns are tied to specific products or services and are targeted to specific individuals or areas, including the elderly, young people, LEP individuals, or financially distressed individuals.
Limited or no offering of products or services with promotional periods or teaser offers (e.g., zero percent interest period). Marketing materials, when applicable, clearly and conspicuously communicate promotional or teaser time frames and requirements for obtaining promotional or teaser offers.	Some products or services are offered with promotional periods or teaser offers. Promotional or teaser time frames and requirements communicated in marketing materials are less conspicuous and require additional disclosure or explanation.	Extensive use of promotional periods or teaser offers. Marketing materials are ambiguous and do not adequately communicate applicable time frames or requirements for receiving promotional or teaser offers.
The bank uses few third parties for operational functions (e.g., account management and customer communications, payment processing, and collections).	The bank uses a moderate number of third parties for operational functions.	The bank relies on a significant number of third parties for operational functions.
Few competitors.	Multiple competitors. May result in bank offering some products or services it is not experienced in handling.	High level of competition causing increased product and service volume, particularly in complex products or services the bank is not experienced in handling.
Compensation programs achieve an appropriate balance between risk appetite and controls. Compensation strategies reflect core principle of "pay for performance." Performance goals and metrics to measure achievement are reasonably transparent.	Compensation programs are appropriately balanced between risk appetite and controls but may be informal or reflect modest weaknesses. Incentives are appropriate. Performance goals and metrics to measure achievement are reasonably transparent overall but may contain some minor obscurities.	Compensation programs focus on short-term performance or sales volumes without consideration of product performance. Incentives may be inappropriate. Use of performance goals and metrics to measure achievement are obscure.

Quality of UDAP and UDAAP Risk Management Indicators

Examiners may use the following indicators when assessing quality of UDAP and UDAAP risk management.

Quality of UDAP and UDAAP Risk Management Indicators			
Strong	**Satisfactory**	**Insufficient**	**Weak**
Bank has a strong record of compliance. Considering the scope and complexity of its operations and structure, UDAP and UDAAP risk management systems are sound and minimize the likelihood of significant or frequent violations or instances of noncompliance.	Bank has a satisfactory record of compliance. Considering scope and complexity of operations and structure, UDAP and UDAAP risk management systems are adequate to avoid significant or frequent violations or instances of noncompliance.	Bank's record of compliance needs improvement. Considering the scope and complexity of operations and structure, UDAP and UDAAP risk management systems may reflect a lack of sufficient commitment to risk management.	Bank has an unsatisfactory record of compliance. Considering scope and complexity of operations and structure, UDAP and UDAAP risk management systems are deficient, reflecting inadequate commitment to risk management.
Management fully understands all aspects of UDAP and UDAAP risk and exhibits clear commitment to risk management. Commitment to risk management is communicated throughout affected areas of the institution.	Management reasonably understands the key aspects of UDAP and UDAAP risk. Commitment to risk management is reasonable and satisfactorily communicated throughout affected areas of the institution.	Management has a marginal understanding of key aspects of UDAP and UDAAP risk. The importance of risk management may not be adequately emphasized or consistently communicated throughout the affected areas of the institution.	Management does not understand or has chosen to ignore key aspects of UDAP and UDAAP risk. Importance of risk management is not emphasized or communicated throughout affected areas of the institution.
UDAP and UDAAP risk assessments and reports presented to the board and management are comprehensive, accurate, and timely and allow the board and management to provide strong UDAP and UDAAP risk management and oversight.	UDAP and UDAAP risk assessments and reports provided to the board and management are adequate and allow the board and management to provide satisfactory UDAP and UDAAP risk management and oversight.	UDAP and UDAAP risk assessments and reports are insufficient and result in inadequate board and management UDAP and UDAAP risk management and oversight.	UDAP and UDAAP risk assessments and reports are inaccurate and unreliable or critically absent. As a result, board and management UDAP and UDAAP risk management and oversight is seriously deficient.
UDAP and UDAAP monitoring and audit processes (including reporting of findings and review of corrective action) are comprehensive, timely, and commensurate with the bank's UDAP and UDAAP risks.	UDAP and UDAAP monitoring and audit processes (including reporting of findings and review of corrective action) are adequate in relation to the bank's UDAP and UDAAP risks.	UDAP and UDAAP monitoring and audit processes (including reporting of findings and review of corrective action) are insufficient in relation to the bank's UDAP and UDAAP risks.	UDAP and UDAAP monitoring and audit processes (including reporting of findings and review of corrective action) are seriously deficient or critically absent.

Quality of UDAP and UDAAP Risk Management Indicators			
Strong	**Satisfactory**	**Insufficient**	**Weak**
Board-approved policies clearly define and management consistently enforces authority and accountability for UDAP and UDAAP risk management.	Board-approved policies define and management generally enforces authority and accountability for UDAP and UDAAP risk management, although some refinements may be needed.	Authority and accountability for UDAP and UDAAP risk management may not be clearly defined or communicated in policies or not enforced by management.	Policies do not establish or management has not enforced accountability for UDAP and UDAAP risk management.
Management anticipates and responds well to changes in applicable laws or regulations, market conditions, and products or services offered.	Management adequately responds to changes in applicable laws or regulations, market conditions, and products or services offered.	Management may not consistently respond to changes in applicable laws or regulations, market conditions, and products or services offered.	Management does not anticipate or take timely or appropriate actions in response to changes in applicable laws or regulations, market conditions, and products or services offered.
Management provides effective resources and training programs to appropriate personnel.	Management provides adequate resources and training, given the complexity of products/operations.	Management may not provide adequate resources or training, given the complexity of products/operations.	Management does not provide resources or training.
When UDAP or UDAAP issues are identified, management promptly implements meaningful corrective action.	UDAP or UDAAP issues can be corrected in the normal course of business without a significant investment of money or board attention. Management is responsive when UDAP or UDAAP issues are identified.	UDAP or UDAAP problems may require a greater degree of board or management attention and may not have been self-identified. Management may not consistently respond to identified UDAP or UDAAP issues.	UDAP or UDAAP issues are often not detected internally, corrective action is often ineffective, or the board or management is unresponsive.
Ongoing due diligence and oversight over applicable third parties is comprehensive and includes assessing the appropriateness of the third party’s compliance program and whether the bank can rely on the third party’s program in the bank’s efforts to avoid UDAP or UDAAP problems.	Ongoing due diligence and oversight over applicable third parties is adequate in relation to UDAP and UDAAP risk posed by the third party’s activities.	The bank’s due diligence and oversight over applicable third parties is insufficient in relation to UDAP and UDAAP risk posed by the third party’s activities.	The bank’s due diligence and oversight over applicable third parties is seriously deficient or critically absent in relation to UDAP and UDAAP risk posed by the third party’s activities.
Bank has a strong record of acting on and monitoring customer complaints.	Bank has a satisfactory record of acting on and monitoring customer complaints.	Bank has an insufficient record of acting on and monitoring customer complaints.	Bank has a weak record of acting on and monitoring customer complaints.

Appendix C: UDAP and UDAAP Legal Standards

This appendix summarizes the legal standards for UDAP.[31] These standards are independent of each other. Depending on the facts, a practice can be unfair, deceptive, or both.

This appendix also summarizes the legal standards for UDAAP and the relationship of UDAP or UDAAP with other laws and regulations.

Examiners may use the information in this appendix to assist in assessing whether a specific act or practice may constitute a potential UDAP or UDAAP issue.

The OCC applies UDAP and, as applicable, UDAAP standards on a case-by-case basis. Whether conduct constitutes UDAP or UDAAP depends on whether the particular facts and circumstances satisfy the legal standards. Examiners should seek guidance from, as appropriate, the supervisory office, lead experts, Bank Supervision Policy, and OCC legal counsel when considering these facts, circumstances, and legal standards.

Section 5 of the FTC Act

Unfairness Standard

Practices must meet all three of the following factors to be considered unfair:

The practice causes substantial consumer injury. Generally, monetary harm, such as when a consumer pays a fee or interest charge, or incurs other similar costs to obtain a bank product or service as a result of an unfair practice, will be deemed to involve substantial injury. An injury may be substantial if it does a small harm to a large number of consumers or if it raises a significant risk of specific harm.

The injury is not outweighed by benefits to the consumer or to competition. To be unfair, a practice must be injurious in its net effects. Generally, an analysis of the net effects includes not only the costs and harm to the consumer, but also consideration of the costs and regulatory burdens to banks, and the potential restrictions on competition and the availability of credit that may result from a finding of unfairness.

The injury caused by the practice is one that consumers could not reasonably have avoided. For example, the injury could reasonably have been avoided if the consumer had sufficient information to make an informed choice. The OCC will not find a practice unfair solely on the grounds that a consumer could have obtained a more appropriate or satisfactory product or service elsewhere. Rather, consumer harm caused by a practice that is coercive or that otherwise effectively inhibits the consumer from making an informed choice would be considered not reasonably avoidable.

[31] Refer to OCC Advisory Letter 2002-3, "Guidance on Unfair or Deceptive Acts or Practices," for more information.

Deception Standard

Practices must meet all three of the following factors to be considered deceptive:

There is a representation, omission, act or practice that is likely to mislead. Practices that can be misleading or deceptive include false oral and written representations; misleading claims about costs of services or products; use of bait-and-switch techniques; and failure to provide promised services or products. For example, there is an implied representation that a product or service is fit for the purposes for which it is being sold or marketed. In addition, the focus of this inquiry is on whether a practice is *likely to* mislead, rather than whether it actually misleads. The OCC will consider the entire advertisement, transaction, or course of dealing in determining whether practices are misleading.

The act or practice would be deceptive from the perspective of a reasonable consumer. The totality of the circumstances and the net impression that is made will be evaluated in making this determination. A bank's failure to provide information also may be a deceptive act or practice and will be evaluated from the perspective of whether a reasonable consumer is likely to have been misled by the omission. A consumer's reaction to an act or practice may be reasonable even if it is not the only reaction that a consumer might have. For example, if marketing conveys more than one meaning to reasonable consumers, one of which is false, it may be deceptive. In addition, an interpretation may be considered reasonable even if not shared by the majority of consumers who received the marketing. Thus, a practice that misleads a significant minority of consumers may be deceptive. In addition, the OCC will evaluate the act or practice from the perspective of any specific audience to which it was targeted or which was reasonably foreseeable.

Depending on the circumstances, subsequent written disclosures containing accurate information about the benefits or material limitations of a product or service may be insufficient to correct a misleading representation. For example, a misleading representation *may not* have been corrected if the consumer is directed away from the importance of language that qualifies or contradicts the prior representation or if it is unreasonable to expect that a consumer will read the entire document containing the qualifying language. Generally, the OCC does not view a disclosure as unfair or deceptive simply because material information is contained in "fine print." However, information in fine print may be insufficient to modify a statement, made conspicuously elsewhere in the communication that would be false or misleading without that modification. This could cause the communication as a whole to be deceptive in violation of the FTC Act.

The representation, omission, act, or practice is material. A material misrepresentation or practice is one that is likely to affect a consumer's choice or conduct concerning a product or service. Consumer injury is likely if inaccurate or omitted information is important to the consumer's decision. Generally, information about costs, benefits, or significant limitations related to the product or service would be material.

Sections 1031 and 1036 of Dodd–Frank

The standards for determining whether an act or practice is unfair or deceptive under Dodd–Frank are substantially similar to the FTC Act standards.[32] Section 1031 of Dodd–Frank prohibits unfair, deceptive, or abusive acts and practices with respect to consumer financial products and services generally. An abusive act or practice is one that[33]

- materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- takes unreasonable advantage of a consumer's
  - lack of understanding of the material risks, costs, or conditions of the product or service;
  - inability to protect his or her interests in selecting or using a consumer financial product or service; or
  - reasonable reliance on a covered person[34] to act in his or her interests.[35]

Abusive acts or practices may also be unfair, deceptive, or both.

Relationship With Other Laws and Regulations

Acts or practices that violate section 5 of the FTC Act, or sections 1031 or 1036 of Dodd–Frank, may also violate other federal or state laws or regulations. Conversely, practices that comply with other federal or state laws may still violate the FTC Act[36] or Dodd–Frank. When potential violations of other laws or regulations may be indicated, examiners should refer to the appropriate booklet(s) of the *Comptroller's Handbook* regarding those other laws or regulations and consult with the OCC subject matter experts and OCC legal counsel, as appropriate.

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[32] Dodd–Frank explains the elements of (1) an unfair act or practice and (2) an abusive act or practice. Refer to 12 USC 5531(c) and (d). Consumer Financial Production Bureau (CFPB) Bulletin 2013-07, "Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts," explains the elements of a deceptive act or practice.

[33] Refer to the CFPB's "Statement of Policy Regarding Prohibition on Abusive Acts or Practices," for more information (85 Fed. Reg. 6733).

[34] The term "covered person" means (1) any person who engages in offering or providing a consumer financial product or service; and (2) any affiliate of a person described in (1) if such affiliate acts as a service provider to such person. Refer to 12 USC 5481(6).

[35] Refer to 12 USC 5531(d)(1)-(2).

[36] For more information, refer to OCC Advisory Letter 2002-3.

References

Listed references apply to national banks and FSAs unless otherwise noted.

Laws

12 USC 5515, (section 1025 of the “Dodd–Frank Wall Street Reform and Consumer Protection Act”)
12 USC 5531, (section 1031 of the “Dodd–Frank Wall Street Reform and Consumer Protection Act”)
12 USC 5536, (section 1036 of the “Dodd–Frank Wall Street Reform and Consumer Protection Act”)
15 USC 45, (section 5 of the “Federal Trade Commission Act”)
15 USC 1639, “Requirements for Certain Mortgages”

Regulations

12 CFR 37, “Debt Cancellation Contracts and Debt Suspension Agreements” (national banks)
12 CFR 1002, “Equal Credit Opportunity” (Regulation B)
12 CFR 1006, “Fair Debt Collection Practices” (Regulation F)
12 CFR 1026, “Truth in Lending” (Regulation Z)
12 CFR 1030, “Truth in Savings” (Regulation DD)

Comptroller’s Handbook

Examination Process
“Bank Supervision Process”
“Community Bank Supervision”
“Federal Branches and Agencies Supervision”
“Large Bank Supervision”

Consumer Compliance
“Compliance Management Systems”
“Homeownership Counseling Examination Procedures”
“Real Estate Settlement Procedures Act”
“Truth in Lending Act”

Safety and Soundness, Asset Quality
“Credit Card Lending”
“Deposit-Related Credit”
“Installment Lending”
“Loan Portfolio Management” (national banks)
“Mortgage Banking”
“Residential Real Estate”

“Retail Lending”
“Student Lending”

Safety and Soundness, Management
“Corporate and Risk Governance”

OTS Examination Handbook (FSAs)

Section 201, “Overview: Lending Operations and Portfolio Risk Management.”

OCC Issuances

Advisory Letter 2002-3, “Guidance on Unfair or Deceptive Acts or Practices”
Advisory Letter 2003-2, “Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices”
OCC Bulletin 2001-6, “Subprime Lending: Expanded Guidance for Subprime Lending Programs”
OCC Bulletin 2005-9, “Overdraft Protection Programs: Interagency Guidance”
OCC Bulletin 2007-26, “Subprime Mortgage Lending: Statement on Subprime Mortgage Lending”
OCC Bulletin 2010-24, “Incentive Compensation: Interagency Guidance on Sound Incentive Compensation Policies”
OCC Bulletin 2010-30, “Reverse Mortgages: Interagency Guidance”
OCC Bulletin 2013-29, “Third-Party Relationships: Risk Management Guidance”
OCC Bulletin 2014-42, “Credit Practices Rules: Interagency Guidance Regarding Unfair or Deceptive Credit Practices”
OCC Bulletin 2017-7, “Third-Party Relationships: Supplemental Examination Procedures”
OCC Bulletin 2017-43, “New, Modified, or Expanded Bank Products and Services: Risk Management Principles”
OCC Bulletin 2018-41, “OCC Enforcement Actions: OCC Enforcement Action Policies and Procedures Manuals”
OCC Bulletin 2020-10, “Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29”
OCC Bulletin 2020-54, “Interagency Lending Principles for Offering Responsible Small-Dollar Loans”

Other

“FTC Policy Statement on Unfairness”
“FTC Policy Statement on Deception”
CFPB Bulletin 2013-07, “Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts”
CFPB “Statement of Policy Regarding Prohibition on Abusive Acts or Practices” (85 Fed. Reg. 6733)